S.B.CR. MISC. BAIL APPLICATION NO.4913/2007

(Durga Dass alias Babu Singh Vs. State of Rajasthan)

Date of Order :: October 22, 2007

HON'BLE MR. H.R.PANWAR,J.

Mr. B.S.Rathore, for the petitioner.
Mr. Ashok Upadhyaya, P.P. for the State.

Heard learned counsel for the petitioner and the Public Prosecutor for the State. Perused the order impugned and the police investigation diary.

It is contended by the learned counsel for the petitioner that the house from where the recovery of illicit liquor was effected, is not in possession of the petitioner and, therefore, offence under section 19/54 of the Rajasthan Excise Act (for short `the Act' hereinafter) is not made out.

Learned Public Prosecutor opposes the bail application and contends that the illicit liquor has been recovered from the house of the petitioner. He further submits that section 49 of the Act recently came to be amended, which prohibits the grant of anticipatory bail under section 438 Cr.P.C. Section 49(2) of the Act provides that nothing in section 438 of the Code shall apply

in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under the proviso to section 54, or under sections 54B, 54D or 56 of this Act.

Keeping in view the amended provisions of section 49 of the Act, which takes away the powers of anticipatory bail under section 438 Cr.P.C., in my view, it is not a fit case to grant anticipatory bail to the petitioner.

The bail application filed by the petitioner under section 438 Cr.P.C. is, therefore, dismissed.

[H.R.PANWAR],J.

m.asif/-